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DEC 14 2005

OFFICE OF PETITIONS

In re Application of	:
Ramon A. Caamano	:
Application No. 10/801,163	:
Filing Date: March 5, 2004	:
Attorney Docket Number:	:
GRTSTF.036A	:
Title of Invention: GENERATOR	:
FOR POWERING A REEL FROM A	:
FLUID FLOW	:

BACKGROUND

This is a decision on the renewed petition filed December 7, 2005, which is properly treated as a petition under 37 C.F.R. §1.10(c), requesting that the above-identified application be accorded a filing date of March 5, 2004.

Shortly after the above-identified application was received in the Office, the Office of Initial Patent Examination mailed Petitioner's filing receipt, indicating that the application had been accorded a filing date of March 8, 2004.

Petitioner has alleged that the application was deposited on March 5, 2004, and the Patent Office has incorrectly assigned a filing date of March 8, 2004 to the instant application. Petitioner has set forth that this application was sent to the Office via the "Express Mail Post Office to Addressee" service of

the United States Postal Service (USPS), and that Express Mail label EV319028732US¹ was associated with this mailing. Petitioner is not in possession of a copy of the Express mail label - Petitioner has set forth that he is not in possession of the processed receipt².

It is unfortunate that applicants chose to deposit a paper as important as a patent application in Express Mail without immediately obtaining an Express Mail receipt showing the desired date of deposit.

The original petition was received on November 12, 2004 and was dismissed via the mailing of a decision on October 5, 2005.

THE RELEVANT PORTION OF THE MPEP

37 C.F.R. § 1.10 Filing of correspondence by "Express Mail" sets forth, in part:

(c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Director to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

[48 FR 2708, Jan. 20, 1983, added effective Feb. 27, 1983; 48 FR 4285, Jan. 31, 1983, paras. (a) & (c), 49 FR 552, Jan. 4, 1984, effective Apr. 1, 1984; paras. (a)-(c) revised and paras. (d) - (f) added, 61 FR 56439, Nov. 1, 1996, effective Dec. 2, 1996; paras. (d) & (e) revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 67 FR 36099, May 23, 2002, effective June 24, 2002; paras. (c), (d), (d)(3), (e) & (e)(4) revised, 68 FR 14332, Mar. 25, 2003, effective May 1, 2003; para. (a)(1) revised, 68 FR 48286, Aug. 13, 2003, effective Sept. 12, 2003]

¹ It is noted that this same Express Mail number appears on the Utility Application Transmittal Sheet, which has been located in the electronic file.

² Original Petition, page 2.

ANALYSIS

37 C.F.R. §1.10(c)(3) requires that any petition under this section of the C.F.R. include a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit. Since it does not appear that a copy of the express mail label has been included, this petition cannot be granted.

With the original petition, Petitioner enclosed a print-out from the USPS website, showing an entry of "Acceptance, March 05, 2004, 4:46 pm, San Francisco, CA 94111." Since Petitioner has provided an official notation from the USPS, it is considered appropriate to waive the requirement of 37 C.F.R. §1.10(c)(3) and accord the application the requested filing date in the absence of a true copy of the Express Mail label.

CONCLUSION

Therefore, this petition is **GRANTED**.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of March 5, 2004, as well as the mailing of a corrected filing receipt.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



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